

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THOMAS ESTLER, BLAKE RUEHRWEIN, :
and STEVEN PARK, on behalf of themselves :
and all others similarly situated, :

Plaintiffs,

V.

DUNKIN BRANDS INC., DUNKIN'
DONUTS STORE #350125, DUNKIN'
DONUTS STORE #350126, DUNKIN'
DONUTS STORE #350127, DUNKIN'
DONUTS STORE #345768, and
JOHN DOES 1-500,

Defendants.

CIVIL NO.: 1:16-cv-00932-LGS
Judge Lorna G. Schofield

DEFENDANT DUNKIN' BRANDS, INC.'S NOTICE OF MOTION TO DISMISS

Defendant Dunkin' Brands, Inc. ("Dunkin'") moves to dismiss Plaintiffs' claims in their entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and Local Rule 7.1(a). This Court does not have jurisdiction to hear Plaintiffs' claims because Plaintiffs have failed to exhaust their exclusive administrative remedies as required by New York Tax Law §§ 1139-40.

Furthermore, Plaintiffs have failed to show that they have any claim against Dunkin', the franchisor of the Dunkin' Donuts system, as opposed to any claims they may allege against individual Dunkin' Donuts franchisees. Dunkin' was not involved in any manner in the sales transactions at issue, and it does not set its franchisees' prices or taxes. Finally, Plaintiffs fail to state a claim under New York General Business Law § 349 or for breach of contract, negligence, or unjust enrichment, and they fail to alleged fraud with the necessary particularity.

The parties have conferred by letter correspondence as required by the Court's Individual Rules and Procedures III.A.3.

Dated: April 19, 2016

Respectfully submitted,

Ronald D. Degen
O'ROURKE & DEGEN, PLLC
225 Broadway
Suite 715
New York, NY 10007
Telephone: (212) 227-4530
Facsimile: (212) 385-9813
rdegen@odlegal.com

/s/ Eric L. Yaffe
Eric L. Yaffe (*pro hac vice*)
Virginia E. Davis Horton (*pro hac vice*)
Whitney A. Fore (*pro hac vice*)
GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.
Suite 700 – The Watergate
600 New Hampshire Avenue, NW
Washington, DC 20037
Telephone: (202) 295-2200
Facsimile: (202) 295-2250
eric.yaffe@gpmlaw.com
virginia.horton@gpmlaw.com
whitney.fore@gpmlaw.com

Attorneys for Defendant Dunkin' Brands, Inc.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system on April 19, 2016, will be sent electronically to the registered participants as identified on the NEF.

/s/ Eric L. Yaffe
Eric L. Yaffe